84-1609 (1)
No.____

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. MCGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM AND ELIZABETH MCNASBY, on behalf of themselves and all others similarly situated,

Appellants

v.

COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION AND CROWN CORK AND SEAL COMPANY, INC., AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAN WORKERS' UNION, LOCAL 266, a/k/a SHEET METAL PRODUCTION WORKERS UNION LOCAL NO. 266,

Appellees

JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED BY APPEAL

I. Did the "particularity" requirement for complaints filed under Section 9(a) of the Pennsylvania Human Relations Act violate the Due Process clause of the Fourteenth Amendment of the Constitution when it required that appellants and other similarly situated women could not have their claims heard by the Pennsylvania Human Relations Commission, although appellants made timely in-person and written complaints to the Commission in the manner and form as directed by the Commission, because, through no fault of appellants, after the statute of limitations had expired on appellants' claims, and without prior warning, the Pennsylvania Supreme Court construed the "particularity" provision of Section 9(a) to

render the Commission's complaint and appellants' complaints invalid, construed the "particularity" provision as jurisdictional and mandatory and applied it retroactively?

II. Did Section 9(a) of the Pennsylvania Human Relations Act deny to appellants and other similarly situated women the equal protection of the laws where although they made timely in-person and written complaints to the Pennsylvania Human Relations Commission in the manner and form as directed by the Commission, the Commission filed its own complaint as well, and, after due notice and a full public hearing, the Commission found that appellants employer and union had discriminated against all of its female employees, including appellants, (and had ordered relief to women who had not made timely complaint to the Commission, but whose claims arose within 90 days of the time the Commission filed an amended complaint) the Pennsylvania Supreme Court construed Section 9(a) of the Act to deny them any relief solely because the form of the original complaint filed by the Commission staff, as well as that filed by appellants, was not sufficiently detailed as to appellants' specific charges?

III. Did Section 9(a) of the Pennsylvania Human Relations Act, as interpreted by the Supreme Court of Pennsylvania, deprive appellants, and others similarly situated, of property without due process of law and deny them the equal protection of the laws by arbitrarily and irrationally preventing their access to the jurisdiction of the Pennsylvania Human Relations Commission, through the imposition of arbitrary, irrational and unnecessary barriers to that jurisdiction, where a timely proceeding before the Commission is a necessary prerequisite to obtaining a remedy for the violation of the civil rights protected by the Act? Specifically, despite the fact that the statute of limitations for claims of employment discrimination under the Act is only ninety (90) days, [Section 9(g)]:

(a) The complaint required to bring a claim o
discrimination before the Commission must specif
ically particularize the allegations of discriminatio
and failure adequately to do so deprives the Com
mission of subject matter jurisdiction, whether th
complainants are represented by counsel or - as i
the instant case - appear pro-se.

(b) If a complaint lacks sufficient particulariza
tion of the details of the alleged discrimination, a
amendment intended to cure the deficiency canno
relate back to the date of the original complaint.

(c) Failure of a respondent to object promptly t
a complaint on grounds that it lacks sufficient pa
ticularity does not constitute a waiver of that defec
nor permit a corrective amendment to relate back t
the original filing date of the complaint.

(d) The absence of prejudice to a responde
arising from the failure of an aggrieved party or th
Commission to sufficiently particularize the allege
discrimination in a complaint filed with the Commis
sion is not grounds for permitting a correctiv
amendment to relate back to the original filing da
of the complaint.

Each of the foregoing rules is directly contrary t
and more onerous than, the comparable rule of the Penn
sylvania Rules of Civil Procedure which govern all pr
ceedings before courts of record in Pennsylvania. Th
imposition of these rules makes access to the Commi
sion arbitrarily and unreasonably difficult, and is not r
tionally related to any legitimate state interest.

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**CERTIFICATE OF ADMISSION TO PRA
BEFORE THE SUPREME COURT O
THE UNITED STATES**

I, Alan M. Lerner, Esquire, counsel for A
hereby certify that I have been duly admitted
before the Supreme Court of the United Stat

/s/ ALAN M. LER
Alan M. Lerner

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A

JURISDICTIONAL STATEMENT ON AP
FROM THE SUPREME COURT
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OPINION BELOW

The Opinion rendered by the Supreme C
Pennsylvania in support of its judgment from wh
present appeal is taken is not officially reported.
officially reported at 486 A.2d 388 (1985). A cop

Opinion and Judgment are included in the Appendix to Appellants' Jurisdictional Statement. (A-87)[1] Also included in the Appendix to Appellants' Jurisdictional Statement are the opinions rendered by the Commonwealth Court of Pennsylvania (A-69) and the Pennsylvania Human Relations Commission. (A-57) The Opinion of the Commonwealth Court of Pennsylvania is officially reported at 77 Pa. Commw. Ct. 291 (1983). The Opinion of the Pennsylvania Human Relations Commission is unreported.

STATEMENT OF JURISDICTION

1. The judgment of the Supreme Court of Pennsylvania affirming the judgment of the Commonwealth Court of Pennsylvania, from which this direct appeal is taken, was entered on January 9, 1985. (A-87)

Appellants' Notice of Appeal was duly filed in the Supreme Court of Pennsylvania on April 4, 1985. (A-103) In accordance with the provisions of 28 U.S.C. § 2101 and Rule 13 of the Rules of the Supreme Court of the United States, this appeal is being timely docketed in this Court.

2. The jurisdiction to review this decision by direct appeal is conferred upon the Supreme Court of the United States by 28 U.S.C. § 1257(2). The judgment of the Pennsylvania Supreme Court (A-87) from which this appeal is being taken is final under the law of the Commonwealth of Pennsylvania. The Pennsylvania Supreme Court upheld Section 9(a) of the Pennsylvania Human Relations Act (43 P.S. § 959 (a)) in the face of appellants' constitutional claims based upon this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The following decision sustains the appellate jurisdiction

1. References throughout the text of Appellants' Jurisdictional Statement to the Appendix to the Jurisdictional Statement, which contains the opinions, judgments and other relevant documents from the Record below, are cited as "A-____."

of the Supreme Court of the United States to review the final judgment on direct appeal in this case:

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).

Logan is indistinguishable from the instant case. It involved an appeal, pursuant to 28 U.S.C. § 1257(2), from the final judgment of the Illinois Supreme Court upholding the Illinois Fair Employment Practices Act's ("FEPA") provision requiring that a fact finding hearing be scheduled within 120 days of the filing of a complaint, as jurisdictional and mandatory, or that the complaint be dismissed, in the face of appellant's claim that his rights to due process and equal protection were violated where the Illinois Fair Employment Practices Commission failed to schedule the hearing timely and his claim was dismissed. This Court held that the Illinois FEPA, as construed by the Illinois Supreme Court, deprived appellant of due process of law. Justices Blackmun, Brennan, Marshall and O'Connor, and Powell and Rehnquist concurred, in two separate opinions, on the ground that the Act denied appellant the equal protection of the law.

3. This action questions the constitutional validity of Section 9(a) of the Pennsylvania Human Relations Act, as construed by the Pennsylvania Supreme Court. That court held that appellants and other similarly situated women must be denied an opportunity to have their claims of sex discrimination in employment heard and decided on the merits under the Act solely because the Pennsylvania Human Relations Commission filed a technically defective form of complaint in response to the timely in-person complaints by eleven (11) female persons, and the timely written and notarized complaints of two of them in the manner and form as directed by the Commission. These complaints contained both individual and class-wide sex discrimination claims against their employer and union.

4. This suit also questions the constitutional validity of Section 9(a) of the Pennsylvania Human Relations

Act, as construed by the Pennsylvania Supreme Court, on equal protection grounds. As construed, the Act requires that appellants and other similarly situated women are entitled to no relief, while it grants relief to others, distinguishing between the two groups solely because the original complaint filed by the Commission on appellants' behalf, and the class action allegation of appellant McNasby's complaint, were technically deficient. Yet, appellants did bring timely complaints to the Human Relations Commission, while those persons held to be entitled to relief did not.

5. In the event that this Honorable Court deems this case inappropriate for review by direct appeal, appellants respectfully request that the papers and proceedings which have been submitted be regarded and acted upon as a Petition for a Writ of Certiorari pursuant to 28 U.S.C. § 2103.

6. Appellants believe that the merits of this case are governed by the decisions of this Court in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and *Cleveland Board of Education v. Loudermill*, 53 U.S.L.W. 4306 (U.S., March 19, 1985), and that this case is appropriate for summary reversal based upon those decisions.

QUESTIONS PRESENTED BY APPEAL

I. Did the "particularity" requirement for complaints filed under Section 9(a) of the Pennsylvania Human Relations Act violate the Due Process clause of the Fourteenth Amendment of the Constitution when it required that appellants and other similarly situated women could not have their claims heard by the Pennsylvania Human Relations Commission, although appellants made timely in-person and written complaints to the Commission in the manner and form as directed by the Commission, because, through no fault of appellants, after the statute of limitations had expired on appellants' claims, and without prior warning, the Pennsylvania Supreme Court construed the "particularity" provision of Section 9(a) to

render the Commission's complaint and appellants' complaints invalid, construed the "particularity" provision as jurisdictional and mandatory and applied it retroactively?

II. Did Section 9(a) of the Pennsylvania Human Relations Act deny to appellants and other similarly situated women the equal protection of the laws where although they made timely in-person and written complaints to the Pennsylvania Human Relations Commission in the manner and form as directed by the Commission, the Commission filed its own complaint as well, and, after due notice and a full public hearing, the Commission found that appellants employer and union had discriminated against all of its female employees, including appellants, (and had ordered relief to women who had not made timely complaint to the Commission, but whose claims arose within 90 days of the time the Commission filed an amended complaint) the Pennsylvania Supreme Court construed Section 9(a) of the Act to deny them any relief solely because the form of the original complaint filed by the Commission staff, as well as that filed by appellants, was not sufficiently detailed as to appellants' specific charges?

III. Did Section 9(a) of the Pennsylvania Human Relations Act, as interpreted by the Supreme Court of Pennsylvania, deprive appellants, and others similarly situated, of property without due process of law and deny them the equal protection of the laws by arbitrarily and irrationally preventing their access to the jurisdiction of the Pennsylvania Human Relations Commission, through the imposition of arbitrary, irrational and unnecessary barriers to that jurisdiction, where a timely proceeding before the Commission is a necessary prerequisite to obtaining a remedy for the violation of the civil rights protected by the Act? Specifically, despite the fact that the statute of limitations for claims of employment discrimination under the Act is only ninety (90) days, [Section 9(g)]:

(a) The complaint required to bring a claim of discrimination before the Commission must specifically particularize the allegations of discrimination, and failure adequately to do so deprives the Commission of subject matter jurisdiction, whether the complainants are represented by counsel or - as in the instant case - appear pro-se.

(b) If a complaint lacks sufficient particularization of the details of the alleged discrimination, an amendment intended to cure the deficiency cannot relate back to the date of the original complaint.

(c) Failure of a respondent to object promptly to a complaint on grounds that it lacks sufficient particularity does not constitute a waiver of that defect nor permit a corrective amendment to relate back to the original filing date of the complaint.

(d) The absence of prejudice to a respondent arising from the failure of an aggrieved party or the Commission to sufficiently particularize the alleged discrimination in a complaint filed with the Commission is not grounds for permitting a corrective amendment to relate back to the original filing date of the complaint.

Each of the foregoing rules is directly contrary to, and more onerous than, the comparable rule of the Pennsylvania Rules of Civil Procedure which govern all proceedings before courts of record in Pennsylvania. The imposition of these rules makes access to the Commission arbitrarily and unreasonably difficult, and is not rationally related to any legitimate state interest.

RAISING THE FEDERAL QUESTION

Appellants raised their claims of deprivation of property without due process of law and denial of the equal protection of the laws in their timely Motion for Recon-

sideration of the Recommendation of Hearing Panel Findings of Fact, Conclusions of Law, Opinion and Fina Order of the Pennsylvania Human Relations Commis sion, in their appeal to the Commonwealth Court o Pennsylvania and in their appeal to the Supreme Cour of Pennsylvania.

The Commission did not address appellants' consti tutional contentions. Both the Commonwealth Court o Pennsylvania and the Supreme Court of Pennsylvani held that appellants had no constitutionally protecte property interests of which they were deprived and tha they were not denied the equal protection of the laws.

STATEMENT OF THE CASE

The Pennsylvania Human Relations Act, 43 P.S § 951 *et seq.*, October 27, 1955, P.L. 744, as amended August 11, 1967, P.L. 208 ("Act") expressly prohibit discrimination in employment based upon sex, 43 P.S § 955(a), and creates the Pennsylvania Human Rela tions Commission ("Commission") "for the administra tion of the Act," 43 P.S. § 956. The Act empowers th Commission "to initiate, receive, investigate and pas upon complaints charging unlawful discriminatory prac tices." 43 P.S. § 957, and to award relief "including bu not limited to, hiring, reinstatement or upgrading of em ployees, with or without back pay." 43 P.S. § 959(f Complaints may be filed by aggrieved individuals or b "the Commission on its own initiative," 43 P.S. § 959(a and the Act requires that such complaints shall identif the person, employer, etc. alleged to have committed th unlawful discrimination, "shall set forth the particulars of the alleged discrimination and shall "contain suc other information as may be required by the Commi sion." 43 P.S. § 959(a). Complaints, whether filed by a aggrieved individual or the Commission, shall be subje to being "reasonably and fairly amend[ed]," 43 P.S. 959(e). The Act also directs the Commission to establis

rules or procedures "to govern, expedite and effectuate" the procedures set out in the Act, 43 P.S. § 959(g).

The Commission is instructed to hold hearings on complaints it receives, after investigation, but is "not . . . bound by the strict rules of evidence." 43 P.S. § 959(e). "If upon on all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice. . . the Commission shall issue [a cease and desist order and grant such other remedies as it deems appropriate.]." 43 P.S. §959(f). The Commission has the power to order relief for persons other than specifically complaining aggrieved parties. *Canon-MacMillan School District v. Commonwealth Human Relations Commission*, 30 Commw. Ct. 1, 372 A.2d 498 (1977). Class actions are appropriate under the Act. *Commonwealth v. Freeport Area School District*, 467 Pa. 522, 359 A.2d 724 (1976). The Act contains a 90-day statute of limitations. 43 P.S. § 959(g).

On February 2, 1970, eleven (11) employees of appellee Crown Cork and Seal Company, Inc. ("Crown" or the "Company") went to the offices of the Commission to complain that Crown, with the acquiescence and assistance of their union (Sheet Metal Workers International Association, AFL-CIO; Can Workers' Union, Local 266, a/k/a Sheet Metal Production Workers' Union, Local 266; hereinafter "Local 266" or "Union"), was discriminating against them and against all of Crown's female production workers in every aspect of employment and, in particular, was engaged in a program to replace its female production employees with males. The Commission staff prepared a detailed statement of the claims, including the names, addresses, telephone numbers and years of seniority of each of the complainants. (A-114)

Although requested to do so, the staff refused to initiate a Commissioner's Complaint because there were multiple complainants. However, the Commission's representative did tell appellants that to protect the rights of

all they needed to have only one of the women sign a written complaint. (A-118)

Within three (3) weeks one of the women, Mary Martin, submitted a notarized letter to the Commission detailing her complaints of sex discrimination, and stating that Crown was discriminating against all women. (A-106) Upon receipt of Mrs. Martin's letter, the Commission had her come in and execute a complaint on the Commission's form. (A-110-113) The Commission then proceeded to notify Crown and the Union and to commence its investigation.

From the outset, and throughout the investigation, both the Company and the Union were kept apprised of the nature and scope of the Commission's investigation. As early as April 27 and 28, 1970, the Commission's field representatives met with Crown's personnel supervisor and industrial relations manager, reviewed and obtained copies of personnel records and discussed the scope of the investigation. The investigation included visits by Commission staff to the Company's plant and offices. (A-124-128)

On June 18, 1970, another signed letter of complaint, that Crown and the Union discriminated against all women, was received by the Commission from Ms. Vivienne Haag. (A-120)

On November 17, 1970, Mrs. Martin wrote to the Commission informing it, without explanation, of her desire to withdraw her complaint. (A-123) The investigation of Mrs. Martin's complaint had, however, "indicated [to the Commission's staff] a pattern of discrimination in all phases of the Company's employment practices." (A-129) Consequently, before closing Mrs. Martin's case, the Commission, on the recommendation of its staff, but without notice to the appellants that their claims were no longer being pursued, issued its own Commissioner's Complaint, on December 22, 1970 (Docket No. E-4027). (A-141) The next day, the Commission served copies of its complaint on the Company and the Union (A-134-

135), and continued the investigation. On January 29, 1971, the Commission closed the case opened as a result of Mrs. Martin's prior class-wide complaint. (A-136-139)

Appellant Elizabeth McNasby submitted her written, signed complaint to the Commission on June 11, 1971, alleging that the Company and Union "have prevented her, as well as all other females, from enjoying equal job opportunities at Crown Cork and Seal Company." (A-140) The Commission accepted the complaint for filing and docketed it at No. E-4249. (Id.)

In April, 1972, the Commission issued its Findings of Probable Cause and initiated conciliation efforts. By mid-1972, counsel had entered appearances for both Crown and the Union, and participated in providing additional personnel data to the Commission.

In 1974, the Supreme Court of Pennsylvania, in the case of *Pennsylvania Human Relations Commission v. United States Steel Corp.*, 458 Pa. 559, 325 A.2d 910 (1974), held that because the form of complaint used by the Commission in that case was not sufficiently detailed to satisfy the requirement of (Section 9(a)) of the Act that the complaint must "set forth the particulars" of the alleged unlawful discriminatory practices, the Commission had failed to establish subject matter jurisdiction in the Commission and could not, therefore, enforce a subpoena which it had issued to United States Steel based upon that complaint.

As a result of this decision, the Commission, in October, 1975, filed a lengthy and detailed amended complaint against Crown and the Union to which were attached thirteen (13) affidavits of complainants, including those of most of the appellants herein. In addition to alleging numerous specific violations, that complaint asserted a class action claim and stated that all of the violations were "of a continuing nature." Crown filed an answer and new matter. The Union filed no answer but submitted a letter from its attorney stating that none needed to be filed. In April, 1976, the Commission served

Amended Findings on counsel for both Crown and t
Union.

In February, 1977, Crown filed a Motion to Dismi
the amended complaint and, in its supporting memora
dum of law argued, for the first time, that the origir
complaints filed in 1970 lacked the specificity requir
by the *United States Steel* decision. Neither the moti
nor the memorandum alleged any prejudice to Crow
The Commission deferred ruling on Crown's motic
pending completion of the public hearing.

After thirty-seven (37) days of public hearing,
which evidence was produced by the Commission st
and by the Company and the Union, the Commission,
August 28, 1981, issued its Recommendation of Heari
Panel, Findings of Fact, Conclusions of Law, Opini
and Final Order. (A-1) Relying on the testimony of
pellants and other female former and current Crown e
ployees concerning their personal experiences, as well
overwhelming statistical evidence of across-the-boa
discrimination against women, the Commission co
cluded that the case against the Company and the U
ion:

> . . . presents one of the most blatant [cases] of s
> discriminatory employment practices that has e
> been brought to the Commission's attention. [Fr
> July 9, 1969 (the effective date of the sex discri
> nation amendments to the Act) to December
> 1975] practices concerning hiring, transfer, pron
> tion, compensation, lay off and recall from lay
> were all tainted by extremely antiquated and ste
> otyped perceptions of female workers manifest
> Crown and Local 266, all operating to the detrim
> of women employees.

(A-28)

With respect to the appellants herein, the Comm
sion stated:

> We have no doubt that [they] were victimized b
> pattern of unlawful sex discrimination that we
> found to have been practiced by [the Company
> the Union] throughout all periods relevant to th
> igation.

(A-67)

These conclusions, from which neither Crow
Local 266 appealed, are amply supported by the
than 6,000 pages of record before the Commissio
the the Commission's 132 detailed Findings of Fa

Despite these findings and an order awarding
to class members with viable claims as of the tim
amended complaint was filed, the Commission, re
on the *United States Steel* decision, held that appe
and all other women who had no viable claims
ninety (90) days before the filing of the amended
plaint, were barred from all relief under the Act
because the Commission's December, 1970 com
was not sufficiently detailed and was therefore a
lity." It also held that Mrs. McNasby's allegation of
wide discrimination was similarly invalid.

The Commission's General Counsel, and appe
moved the Commission to reconsider. The Comm
agreed to reconsider, but despite specific referen
this Court's decision in *Logan v. Zimmerman Brus*
455 U.S. 422 (1982), by appellants, the Commissi
affirmed its holding that appellants and other w
similarly situated were barred from all relief und
Act. (A-57)

Appellants filed a timely appeal to the Com
wealth Court of Pennsylvania which affirmed. The
petitioned the Pennsylvania Supreme Court to gr
locatur. The Pennsylvania Supreme Court grant
locatur, and on January 9, 1985, affirmed the deci
the Commonwealth Court. Chief Justice Nix filed
senting opinion stating that under this Court's de
in *Logan v. Zimmerman Brush Co.*, the majority's

pretation of Section 9(a) of the Act violated appel constitutional rights. (A-98)

PRESENTATION OF THE SUBSTANTIAL FEDERAL QUESTIONS

I. Appellants Were Deprived of Property Withou Process of Law Because Under Section 9(a) of the sylvania Human Relations Act Their Rights to R For Unlawful Discrimination Under the Act We stroyed By the Failure of the Pennsylvania Hum lations Commission to File A Legally Valid Com Or To Notify Them That It Was No Longer Prot Their Rights.

A. Appellants' Right to Relief Under the Pennsy Human Relations Act Is A Constitutionally Pro Property Interest.

> The hallmark of property . . . is an individual entit grounded in state law, which cannot be removed 'for cause.'

Logan v. Zimmerman Brush Co., 455 U.S. 42 (1982). The Pennsylvania Human Relations A pressly declares that the right to equal employme portunity free from discrimination based upon s "civil right which shall be enforceable as set forth i [A]ct." 43 P.S. § 953. It also specifically prohib crimination in employment based upon sex, 43 955, creates the Commission to administer the A gives the Commission the power, after a hearin "upon all the evidence," to make findings of discr tion and to award to victims of unlawful discrimin wide variety of remedies "including but not lim hiring, reinstatement or upgrading of employees without back pay . . . ." 43 P.S. § 959(f).

Appellants' rights under the Pennsylvania A precisely the same as were those of the appel

Logan. In that case this Court held that plaintif
property interest in his right to bring an action ur
Illinois Fair Employment Practices Act, and that
had deprived him of this right without due proces
by terminating the cause of action solely becaus
linois Fair Employment Practices Commission ha
to schedule a fact-finding conference within
days required by statute. Just as in *Logan*, appel
this case possessed rights to redress created by t
statute "which cannot be removed except for ca

The court below erred in its application of
Reading *Logan* as declaring that the cause of acti
menced by the filing of a complaint by the ag
party was the *only* protected property interest, t
reasoned that since appellants never filed their o
ten complaints they never followed the "reasona
cedural requirements" necessary to obtain the
interest inherent in that cause of action. The co
found that appellants had no property right arisi
the Commission's complaint since the Commis
not represent them. *Murphy v. Commonwealth*
sylvania, ____Pa. ____, 486 A.2d 388 (1985). T
below erred in each of these conclusions.

The complaints filed by Mary Martin in F
1970, by the Commission in December, 1970
Elizabeth McNasby in June, 1971 created a
right in appellants. Following the clear directio
Act, appellants went to the Commission to c
about real and immediate discrimination to wh
and all women employed at Crown were subjec
to ask the Commission to initiate proceedings u
Act to protect them from this unlawful discrim
They had "more than an abstract desire or int
enforcement of the law on behalf of the Commo
They had a very personal need and desire for t
dies provided by the Act. And they had good

believe that if they followed the words of the A
Commission's directions, their rights woul
tected.

The plain language of the Act supports
understanding. It creates the Commission to
the Act, mandates that actions seeking redr
lawful employment discrimination be initiate
ing of complaints at the Commission, and pe
complaints to be filed by *either* an aggrieved in
the Commission. 43 P.S. § 959(a). On its fa
does not purport to draw any distinction betw
asserted in complaints filed by an aggrieved
those asserted in complaints filed by the Co
and it gives complainants no reason to believe
file individual complaints rather than rely upo
mission in order to assure that their rights to
protected. Indeed, the Commission was crea
very purpose of attacking the persistent prob
ployment discrimination "and to provide relie
who have been unjustly injured thereby." *Fy*
Transportation, Inc., 487 Pa. 137, 140, 40
(1979). Class actions may be brought und
Commonwealth v. Freeport Area School Dist
and the Commission has power to grant relie
persons other than specifically named co
Canon-MacMillan School District v. Common
man Relations Commission, supra.

The Commission itself, as well as the w
Act, gave appellants reason to believe that
were being fully protected. When appe
brought their charges to the Commission,
structed appellants that their rights would be
one of them signed a written complaint. This
tin did in February, 1970, and Elizabeth Mc
June, 1971. Both of these complaints allege
nation against *all* women at Crown. Moreove

of the Commission makes clear that the in-person complaints of appellants, the written complaint of Mary Martin and the investigation that flowed from them led directly to the Commission's filing its complaint in December, 1970. Indeed, the record is clear that the Commission's complaint was filed because Mrs. Martin decided unilaterally to withdraw her complaint, at a time when the Commission's investigation of her charges pointed to the existence of class-wide discrimination. And the Commissioners' complaint itself was framed as a class-wide complaint.

Thus, just as in *Perry v. Sinderman*, 408 U.S. 593 (1972), the absence of a formal, written contract or tenure policy did not preclude a finding that the teacher had a constitutionally protected property interest in continued employment; so here, the absence of a written complaint signed by each individual appellant does not preclude a finding that they had a constitutionally protected property right in the proceedings before the Commission.

Nor does the mere fact that the state characterized the particularity requirement of Section 9(a) as "jurisdictional" and mandatory deprive appellants of what would otherwise have been their protected property interests under the Act. In *Logan*, as in the instant case, the provision of the state statute was defined, under state law, as "jurisdictional" and "mandatory." Yet, in *Logan* this Court held that federal constitutional standards of due process had to be used to measure whether the appellant was properly denied his right to relief regardless of the state's characterization. Thus, the fact that Section 9(a) of the Act is "jurisdictional" and "mandatory" does not determine that it satisfies federal constitutional requirements for due process. *Cleveland Board of Education v. Loudermill*, 53 U.S.L.W. 4306, 4307-4308 (U.S., March 19, 1985).

In sum, even without the formality of a written complaint signed by each appellant, the provisions of the Act and the assurances of the Commission endowed appellants with a sufficient interest in, and expectation of, po-

tential direct and personal benefit from the Commission's December, 1970 complaint, and from Elizabeth McNasby's June, 1971 complaint, based upon the then-existing state of the record and the law, to create a "property" interest. Appellants could not be deprived of this property interest without due process of law. *Logan v. Zimmerman Brush Co.; Perry v. Sinderman*, 408 U.S. at 601-602.

B. Appellants Were Deprived of Their Property Without Due Process of Law.

At its simplest and most basic level, the protection guaranteed by the Due Process clause is that one should not be deprived of property without prior "notice and an opportunity for hearing appropriate to the nature of the case." *Logan v. Zimmerman Brush Co.*, 455 U.S. at 428, quoting *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Whether appellants are determined to have a property interest in their underlying right to redress under the Act, or whether they are determined to have such a property interest in their right to a meaningful opportunity to use the Act's adjudicatory procedures, or whether both interests are constitutionally protected property interests, it is clear that appellants were deprived of these interests without adequate notice and an opportunity for an appropriate hearing.

Once the Legislature in Pennsylvania created the civil right to be free from sex-based discrimination in employment, and provided a remedy for violation of that right, the state could not deprive persons of that state-created remedy except by rules or procedures that satisfy the requirements of the Constitution's due process guarantee. *Logan*, 455 U.S. at 432; *Vitek v. Jones*, 436 U.S. 407 (1978).

In the instant case, however, appellants were entirely deprived of their protected rights under the Act without the opportunity for notice or a hearing, despite

having complied fully with the dictates of the Act and of the Commission itself. Not only did the language of the Act explicitly allow *either* an aggrieved person or the Commission to file a complaint, the statute also lacked any provisions that would have served to notify appellants of any significant difference in the protection of their rights depending on who did file. Moreover, it is clear that the Commission first told appellants that, "All that would be necessary is *one* name on a complaint. . . ." (A-118) This was accomplished when Mary Martin filed her complaint in February, 1970, and again when Elizabeth McNasby filed hers in June, 1971.

Having complied with the plain language of the Act and the instructions of the Commission, provided affidavits for the amended complaint, given depositions and testified at the public hearing — done all that the Commission had asked of them and all that any reasonable person would have believed was required to protect their rights — the first time that appellants knew or had any reason to know that their claims, and those of fellow class members, had not been preserved by the proceedings undertaken by the Commission was *after* their rights had already expired. Appellants' right to relief was destroyed merely because, unbeknownst to them, the Commission's December, 1970 complaint (and the allegation in Mrs. McNasby's complaint that *all* women were being deprived of equal job opportunities by Crown and the Union) would be rendered invalid under Section 9(a) of the Act by the Pennsylvania Supreme Court's interpretation four years later in the *United States Steel* case. Thus, according to the Pennsylvania Supreme Court, which held that the Commission never obtained jurisdiction until it filed its amended complaint in 1975, the public hearing was no hearing at all with respect to the claims of appellants and other women similarly situated.

Appellants were therefore deprived of their property rights without notice or a hearing of any kind, a clear

violation of their rights under the Due Process clause of the Fourteenth Amendment of the Constitution. *Logan v. Zimmerman Brush Co.*

II. Appellants And Those Similarly Situated Were Denied The Equal Protection Of The Laws By Section 9(a) Of The Pennsylvania Human Relations Act When They Were Denied Relief Under The Act Solely Because The Human Relations Commission Filed A Technically Deficient Complaint Covering Their Claims And Because Its Advice To Them About How to File A Complaint Was Erroneous.

At the lowest level of equal protection scrutiny, a state may only "classify the persons that it affects in a manner rationally related to legitimate governmental concerns." *Logan*, 455 U.S. at 439, quoting *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981) (concurring opinion of Blackmun, J.), 455 U.S. at 443 (concurring opinion of Powell, J.). Thus, "[t]he classification scheme must 'rationally advance a reasonable and identifiable governmental objective.' " *Id.*

Pennsylvania's enforcement of Section 9(a), however, unconstitutionally denied appellants relief which was granted to other former and current Crown employees based on a wholly irrational distinction. Appellants, and others similarly situated, were found to be entitled to no relief under the Pennsylvania Human Relations Act while other women who were victims of the same discrimination by Crown and the Union were found to be entitled to the Act's remedies. Yet, whereas appellants brought their complaints to the attention of the Commission in a timely fashion, and two (2) of their original number (Martin and McNasby) actually filed written, signed complaints, the persons deemed entitled to relief did not. Appellants provided information, affidavits and testimony to the Commission to assist in its investigation and trial; persons granted relief did not. The persons

granted relief did nothing to pursue their claims that appellants failed to do.

The only distinction that has been drawn between appellants and those persons deemed entitled to relief under the Act is that whereas appellants and other women similarly situated had valid claims when Mrs. Martin, the Commission and Mrs. McNasby filed complaints later held to be technically deficient under the Act, their claims had expired by the time the amended complaint was filed; while those persons who did nothing but were held entitled to relief still had viable claims when the Commission finally filed a valid amended complaint.

It is clear that this classification of claimants, solely on the basis of whether the Commission, or Mrs. Martin or Mrs. McNasby, filed a complaint which was sufficiently detailed does not " 'rationally advance [any] reasonable and identifiable governmental objective.' " *Id.* Indeed, the court below so held. (A-94)

In the court below, appellants argued that all of the State's legitimate objectives were satisfied by the proceedings before the Commission—i.e., that the Company and the Union had been given extensive notice of the nature, breadth and depth of the alleged discrimination about which Mrs. Martin, the Commission and Mrs. McNasby were complaining, and that neither respondent ever objected or claimed — let alone proved — any prejudice resulting from any lack of detail in any of the complaints. The Pennsylvania Supreme Court held that those arguments were irrelevant because the Act made the "particularity" requirement "jurisdictional," and because it applied retroactively. The necessary implication of this reasoning is that where the legislature mandates a classification, it need *not* "rationally advance any reasonable and identifiable governmental objective" so long as the classification is deemed by the state to be "jurisdictional." Such reasoning is directly contrary to the most fundamental requirement of the Equal Protection

clause and to this Court's discussion of the significance of "jurisdictional" characterizations in *Logan v. Zimmerman Brush Co. See supra,* discussion in Section I(A).

III. By Converting What In Other Areas of State Law And Practice Are Procedural Rules Governing Pleadings Into Jurisdictional Prerequisites Under the Human Relations Act, Section 9(a) Arbitrarily And Irrationally Deprived Appellants and Others Similarly Situated Of Reasonable Access To The Forum Designated For Administration of The Act.

Complaints filed in courts of record of Pennsylvania are not governed by the harsh "particularity" requirements of Section 9(a) of the Human Relations Act or any equivalent provision. The Pennsylvania Rules of Civil Procedure do require that plaintiffs' complaints set forth the *facts* giving rise to the asserted cause of action. Rule 1019, Pa. Rules of Civil Procedure.[2] However, consistent with the observation of Mr. Justice Powell, concurring in *Logan*, 455 U.S. at 443, the filing of a complaint which fails sufficiently to particularize the facts nevertheless tolls the running of the statute of limitations. 2 Goodrich-Amram, Standard Pennsylvania Practice, §§ 1033.1, 1033.4. Absent legally cognizable prejudice to the complaining party, the defect may be cured by subsequent amendment, even one filed after the date on which the statute of limitations would have run. *Keller v. Keller Motor Co.*, 386 Pa. 56, 58, 124 A.2d 105, 106 (1956); *Sands v. Forrest*, 290 Pa. Super. Ct. 48, 53, 434 A.2d 122, 125 (1981); *Peaceman v. Tedesco*, 51 Pa. Commw. Ct. 544, 414 A.2d 1119 (1980). Thus, a plaintiff who files a technically deficient complaint in a Pennsylvania court will

2. In the U.S. Steel case, the Pennsylvania Supreme Court expressly analogized the "particularity" requirement of Section 9(a) of the Act, 43 P.S. § 959(a), to the "fact pleading" requirement of the Pennsylvania Rules of Civil Procedure. 458 Pa. at 564-65.

not be deprived of access to the courts for adjudication of his claim.[3]

The court's holding below that these rules did not apply to a complaint filed with the Human Relations Commission — the forum in which one must commence a proceeding to remedy unlawful employment discrimination under the Act — unconstitutionally deprives civil rights complainants of equal protection under the law. The State may not place a special burden on minorities seeking to vindicate their rights in the governmental process. *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982); *Hunter v. Erickson*, 393 U.S. 385 (1969). Yet, ironically, although the Pennsylvania Human Relations Commission was created to provide a forum in which members of minority groups could seek redress for denial of their rights, Section 9(a) of the Act, as construed by the Pennsylvania Supreme Court, places a burden on the use of that forum that is not placed on anyone who seeks redress in the courts. The Section as construed therefore violates the Equal Protection clause of the Fourteenth Amendment.

Moreover, Pennsylvania's construction of the statute violates the due process requirement that where a state establishes an exclusive forum for adjudication of claims, it must give claimants a meaningful opportunity for access to that forum. See *United States v. Kras*, 409 U.S. 434 (1973); *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971); *Logan v. Zimmerman Brush Co.* 455 U.S. at 430, n.5. The Pennsylvania Supreme Court's holding that failure of the Commission staff to particularize the alleged discrimination was a jurisdictional defect, and the court's retroactive application of that holding, effec-

3. Indeed, in such cases the absence of a timely objection constitutes a waiver of any objection that might be available to defendant to challenge the sufficiency of the factual pleading. *Mackey v. Adamski*, 286 Pa. Super. Ct. 456, 429 A.2d 28 (1981), Rule 1032, Pa.R.Civ.P.; 2 Goodrich-Amram, Standard Pennsylvania Practice, § 1032.1.

tively barred appellants' access to the Commission. By the time appellants had any reason to know that there was a problem with the Commission's complaint, the ninety (90) day statute of limitations on their claims had expired.

Similarly, distinguishing between those claimants who were permitted to have their claims adjudicated by the Commission and those who were not, solely upon the basis of whether the Commission itself filed a properly worded complaint within the time prescribed by the Act, does not promote any legitimate state interest in a rational way, and thus deprives appellants and others similarly situated of the equal protection of the laws. *Schweiker v. Wilson*, 450 U.S. at 23; *Logan v. Zimmerman Brush Co.*, 455 U.S. at 438 (concurring opinion of Blackmun, J.), 455 U.S. at 443 (concurring opinion of Powell, J.).

CONCLUSION

For the reasons stated above, this Court has juris diction of appellants' appeal, the appeal raises a substar tial question, and upon consideration thereof the Cou should reverse the final judgment of the Pennsylvan Supreme Court, and the final judgments of the Con monwealth Court of Pennsylvania and the Pennsylvan Human Relations Commission, with directions to ent judgment in favor of appellants and all others similar situated on their claims of sex discrimination in emplo ment by appellees Crown and Local 266, and to provi appropriate remedies for them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alan M. Lerner, hereby certify that I have serv
three (3) copies of the attached Jurisdictional Statem
On Appeal From the Supreme Court of Pennsylvania a
the Appendix thereto, upon all interested counsel by
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Dated: April 9, 1985